C/HRG

Banny

OGC-94-52916
19 September 1994

MEMORANDUM FOR: David P. Holmes
Deputy General Counsel

FROM: Robert J. Eatinger. Jr.
Assistant General Counsel
Litigation Division, OGC

SUBJECT: DCI Sources and Methods Authority With Respect
to JFK Assassination Records

1.   Per your request, I have attached a copy of the
President John F. Kennedy Assassination Records Collection Act of
1992 (ARCA), Pub. L. 102-526, 106 Stat. 3443-3458, reprinted at
44 U.S.C. § 2107 note. For your convenience, I have highlighted
the pertinent provisions that will aid in responding to an
inquiry regarding the statute's effect on the DCI's statutory
authority to protect intelligence sources and methods.

2.   The clear language and intent of the law is to supersede
statutes that prohibit disclosure of information, except for some
irrelevant subject areas, such as tax records. The statute
provides that "it shall take precedence over any other law
(except section 6103 of the Internal Revenue Code), judicial
decision construing such law, or common law doctrine that would
otherwise prohibit" the disclosure of information subject to the
Act. ARCA § 11(a). This language, taken with the provisions
discussed below which limit the intelligence sources and methods
that may be protected and set a strict procedural scheme by which
information is to be reviewed under the ARCA, effectively
supersedes the DCI's National Security Act authority with respect
to intelligence sources and methods information subject to the
ARCA.

3.   Section 6 of the ARCA provides the grounds for which the
release of information may be "postponed." The statute
contemplates that all information will eventually be released.
Indeed, it specifies that all information will be made available
to the public no later than 25 years after the passage of the
ARCA (which occurred in October 1992) unless the president
certifies that continued postponement is necessary. ARCA
§ 4(g)(2)(D). With respect to intelligence-related information,
ARCA allows postponement if:

"(1) the threat to ... intelligence operations ... is
of such gravity that it outweighs the public interest, and
such public disclosure would reveal--

SUBJECT: DCI Sources and Methods Authority With Respect to JFK Assassination Records

(A) an intelligence agent whose identity <u>currently</u> requires protection;

(B) an intelligence source or method which is <u>currently utilized</u>, or reasonably expected to be utilized, by the United States Government and which has <u>not been officially disclosed</u>, the disclosure of which <u>would interfere</u> with the conduct of intelligence activities; or

(C) any other matter currently relating to ... intelligence operations ... the disclosure of which would <u>demonstrably impair</u> the national security of the United States."

ARCA § 6(1) (Emphasis added.)

4. The originating agency is to make the first review to identify information that meets the standards for postponement. ARCA § 4(c)(2)(D)(i). For CIA, this effort is being undertaken by the Historical Review Group, in consultation with the Directorate of Operations and other appropriate Agency components. Information the originating agencies identify for postponement must be transmitted to the Review Board. ARCA § 4(c)(2)(E). The Review Board "shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records." ARCA § 7(i)(1). Specifically, the "Review Board shall consider and render decisions on ... whether an assassination record or particular information in a record qualifies for postponement of disclosure under the Act." ARCA § 7(i)(2)(B).

5. If the Review Board determines to order the disclosure of information that the originating agency felt met the criteria for postponement, it "shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made." ARCA § 9(c)(4)(A). If the information contained in an assassination record is "obtained or developed <u>solely</u> within the executive branch, the President shall have the <u>sole and nondelegable authority</u> to require the disclosure or postponement of ... the information under the standards set forth in Section 6." ARCA § 9(d)(1) (emphasis added). The President's decision must be certified to the Review Board within 30 days of the Review Boards determination. <u>Id</u>. Records postponed by the President must be re-reviewed every 5 years. ARCA § 9(d)(2).

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SUBJECT: DCI Sources and Methods Authority With Respect to JFK
           Assassination Records

     6.   I would be happy to discuss this further if you so
desire.   You might also want to contact John Pereira (x30373)
since he has met with some or all of the Review Board members.

Robert J. Eatinger, Jr.

Attachment

3

SUBJECT: DCI Sources and Methods Authority w/Respect
           to JFK Assassination Records

OGC-94-52916

DCI/OGC/RJEatinger:76105 (19 Sept 94)

Original - Addressee (w/attach)(hand delivered)
       1 - OGC Registry (w/attach)
       1 - Lit File _____
       1 - RBB (OGC/ILD)
       1 - C/HRG (J.Pereira-404 Ames)
       1 - RJE - Soft File (w/attach)
       1 - RJE - Signer
       1 - PDP
       1 - KK -fyi
       1 - PAS-fyi

14-00000

CIA HAS NO OBJECTION TO
DECLASSIFICATION AND/OR
RELEASE OF CIA INFORMATION
IN THIS DOCUMENT

March 1, 1996

Mr. John Pereira
Director
Historical Review Group
Center for the Study of Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear John:

A few months ago we made a request to the Department of Defense for, *inter alia*,

> "Any available MOUs or MOAs defining command responsibilities and
> lines of authority, responsibility and accountability when individuals of
> the Central Intelligence Agency serve under 'military cover,' i.e., are
> employed and operate for the CIA while wearing the uniform of the
> armed services. (Applicable period of interest here is 1956-64.)"

This letter is our official notification to you that we have made the above-stated request.
We understand that the Agency was advised of this request by the Department of
Defense at the time the request was made. We do, however, apologize for our
inadvertent error in not having provided you with a contemporaneous notification.

Sincerely,

David G. Marwell
Executive Director

Assassination Records Review Board
Review Guidelines
for Information Relating to Official Cover

This document sets forth the review guidelines for use by the Assassination Records Review Board ("Board" or "ARRB") and the Central Intelligence Agency ("CIA" or "Agency") for public release of certain information concerning the identity, scope, details, and specific mechanisms of official cover (hereafter "official cover details"). These guidelines have been officially adopted by the Board to serve the public interest in making the complete story of the JFK assassination available while protecting from official disclosure information which would be harmful to the national security and is properly classified under Executive Order 12958.

1. Information in documents originated by the Congress (most often in the context of personal statements to committees or committee staffs) which sets forth official cover details shall be presumptively released unless it sets forth specific information not generally known to the public or the Agency shall be able to demonstrate that it has taken affirmative action to prevent the disclosure of such information in the past and that release here would cause identifiable damage to the national security.

2. Information in documents originated by the Executive Branch (including those designated by the parties as quasi-executive branch documents which reflect extracts from the records of the Executive Branch) which sets forth official cover details shall be presumptively postponed to the extent that it concerns:
   - identification of the official cover provider,
   - specific locations used for official cover, and
   - identity, scope, details and mechanisms of any particular official cover.

3. Information in such documents which the Executive Branch has taken an affirmative act to officially disclose or allow to be disclosed shall be presumed to be releasable.

4. Moreover, information in such documents which relates to individuals who are considered important to the story of the assassination shall, consistent with past practice, be considered for release on an individual basis with the Agency having a higher standard of proof of damage to the national security.

5. For any information postponed pursuant to these Guidelines, the Agency agrees to provide a summary or substitution which preserves the content and relevance of the postponed information.

Neither these guidelines nor the release of documents pursuant to these guidelines shall be deemed to constitute an official Executive Branch acknowledgment of the identity, scope, details, and specific mechanisms of official cover in other information disclosure law matters.

For the Assassination Records Review Board: _____

S E C R E T

Example of proposed summary/substitution

Original:

Flynn recalls the following procedures ☐ for CIA employees, The ☐ would request ☐ The ☐ Office would contact the CIA liaison officer, who would ☐ The ☐ would then grant clearance. A record of ☐ would probably be placed in the individual's ☐ security file.

Summary/substitution:
(NB: Remaining original words in normal type; substituted language in bracketed bold italics)

Flynn recalls the following procedures for *[a specific provider of official cover to provide cover]* for CIA employees. *[One office of the official provider of cover]* would request *[certain documents from a second office of the official provider of cover]*. *[That second office]* would contact the CIA liaison officer, who would *[provide requested information]*. *[The second office at the cover provider would take certain administrative steps]*. A record *[of the requested information]* would *[be maintained by the official cover provider]*.

CC:
Sent on 18 February 1998 at 07:25:54 AM

URGENT FAX

PLEASE HAND DELIVER
to Peggy Grafeld, room 1512

Peggy,

as I mentioned, the judge and jeremy came to visit our office director yesterday .... very pleasant ... and everybody said the right thing about "working together."

things continue to move forward quickly.

attached is the ARRB's "review guidelines" received last night and our what will be our hand-written slight suggested modifications ... and ... most important ... our interpretive memo. our lawyers have reviewed and find them legally identical. THE BOTTOM LINE IS THAT THIS AGREEMENT PRESERVES THE SECRECT RE OFFICIAL COVER AND THERE WILL BE NO OFFICIAL ACKNOWLEDGEMENT OF ANY SPECIFIC COVER AS A RESULT OF A RELEASE OF EXECUTIVE BRANCH DOCUMENTS BY THE ARRB.

let me know soonest your thoughts (out Friday COB is target)... especially if you want anything included in our memo (the review guidelines belong to them so the thought was suggest as few changes as possible AND put any clarifying language we want in our interpretive memo).

lastly, as for the second "legal" memo for Calder/Kennedy signature, we can also incorporate any changes but my sense is the staff and Board are fairly comfortable with it so it does not appear to be of overarching necessity to make changes.

thanks,

Lee Strickland
Voice: (703) 613-1289

DRAFT DRAFT DRAFT
February 20, 1998

ARRB Staff Guidelines for Review of Records Involving Official Cover

1. Substitute language or a summary will be used for all postponements. The substitutions will preserve the context and relevance of the information. (E.g., "official cover" or "location" or "details of cover arrangements.")

2. *For Congressional documents.* Cover information will be released unless the information explains details of the scope of official cover or important details about the mechanisms of official cover that is not generally known to the public. Information shall not be released if the Executive Branch shall be able to demonstrate that it has taken affirmative action to prevent the disclosure of such information in the past and that release here would cause identifiable damage to national security.

3. *For Executive Branch documents and "derivative" documents.* Information generally will be released except:

    a. the substitute language "official cover" will be used for the actual official cover;

    b. substitute language will be used in lieu of the details of official cover or the specific locations of cover facilities;

    c. the cover status of certain high-profile individuals will be released when disclosure has previously been permitted by affirmative official acts of the Executive Branch of the US government;

    d. cover status of other individuals will be disclosed only to the extent that they are important to the assassination story and they will be handled in a way similar to other key issues on a case-by-case basis; and

    e. information disclosing that a cover arrangement was *not* employed shall be released unless the information reveals or would reasonably imply the existence of otherwise postponable information.

4. The Review Board shall continue to retain the final authority to make "formal determinations" within the meaning of the JFK Act. Although these Guidelines describe the approach the Board intends to follow, whenever a document presents an issue that is not resolvable under these guidelines or to the extent that a document presents a difficult issue under these guidelines, the issue shall be brought to the Review Board's attention for its formal determination.

Central Intelligence Agency

Washington, D.C. 20505

DRAFT

3 April 1998

T. Jeremy Gunn, Esquire
Executive Director
Assassination Records Review Board
600 E Street, NW
Suite 207
Washington, D.C.   20530

Dear Mr. Gunn:

Re: Release or Postponement of "Official Cover" Information

This letter is intended to confirm our understanding of the recent "review guidelines" promulgated by the Assassination Records Review Board ("Board" or "ARRB") for public release of certain information concerning the identity, scope, details, and specific mechanisms of official cover (hereafter "official cover details"). This understanding is based on the prefatory negotiations between our respective staffs and reflects the agreement of all concerned agencies and departments within the Executive Branch. Please note that we have included a classified addendum which presents examples of some of the following understandings.

1.   It is the intent of the staff of the Board and the federal agencies that these guidelines should serve the public interest by making the complete story of the JFK assassination available while protecting from official disclosure information which would be harmful to the national security and is properly classified under Executive Order 12958.

2.   Information in documents originated by the Congress (most often in the context of personal statements to committees or committee staffs) which sets forth official cover details shall be presumptively released unless it sets forth specific information not generally known to the public or the Executive

Branch is able to demonstrate that it has taken affirmative action to prevent the disclosure of similar or identical information in another context in the past and that release here would cause identifiable damage to the national security.

T. Jeremy Gunn, Esquire

3.   Information in documents originated by the Executive
Branch (including those designated by the parties as quasi-
executive branch documents which reflect extracts from the
records of the Executive Branch) which sets forth official cover
details shall be presumptively postponed to the extent that it
concerns:

- identity or identification of the official cover
  provider,
- specific locations used for official cover, and
- scope, details and mechanisms of any particular
  official cover.

4.   Information in such documents which the Executive Branch
has taken an affirmative act to officially disclose or allow to
be disclosed shall be presumed to be releasable; however, in no
event shall extrinsic evidence by inference or deductive
reasoning be deemed to qualify for this provision.

5.   Further, information in such documents which relates to
individuals who are considered important to the story of the
assassination shall, consistent with past practice, be considered
for release on an individual basis with the Executive Branch
having a higher standard of proof of damage to the national
security.

6.   For any information postponed pursuant to the review
guidelines, the concerned Executive Branch agency or department
agrees to provide an unclassified summary or substitution which
preserves the general content and relevance of the postponed
information.

T. Jeremy Gunn, Esquire

7. It is the intent of the Executive Branch that neither the review guidelines nor the release of documents pursuant to these guidelines shall be deemed to constitute an official Executive Branch acknowledgment of the identity, scope, details, and specific mechanisms of official cover in other information disclosure law matters.

8. It is the understanding of the Executive Branch that no release under the authority of the JFK Act shall be deemed to constitute official executive acknowledgment in other information disclosure law matters unrelated to the Act.

Your acknowledgment of receipt and concurrence below would be greatly appreciated.

Sincerely yours,

Lee S. Strickland
Chief, Information Review Group

Receipt and general agreement acknowledged
in my capacity as Executive Director,
Assassination Records Review Board:

_____

T. Jeremy Gunn

_____

Date

3

ACTION:
COPIES TO:
M
INR
L
S/S
IA
W1IS/
dsm

Assassination Records Review Board
600 E Street NW. • 2nd Floor • Washington, DC 20530
(202) 724-0088 • Fax: (202) 724-0457

9722779

December 18, 1997

The Honorable Madeleine K. Albright
Secretary of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Albright:

In accordance with the President John F. Kennedy Assassination Records Collection Act
of 1992, I am writing to inform you that the Assassination Records Review Board has
made additional formal determinations concerning the public disclosure of State
Department records at its meeting on December 15, 1997.

Enclosed is a list of the determinations that the Review Board has made. These
decisions were premised on several factors including the historical interest in the
documents and the absence of evidence that the release of the information would cause
harm to the United States or to any individual.

You have seven days to appeal these decisions to the President. You are invited to send
your representative to the Review Board to examine our copies of the documents for
which determinations have been made and to discuss the determinations with the
Review Board staff.

Sincerely,

T. Jeremy Gunn
Executive Director

Enclosure

cc: Ms. Margaret Grafeld, Director, Office of Information Resources, Management
        Programs and Services, Department of State

BOARD MEMBERS: *John R. Tunheim, Chair* • *Henry F. Graff* • *Kermit L. Hall* • *William L. Joyce* • *Anna K. Nelson*
EXECUTIVE DIRECTOR: *T. Jeremy Gunn* • DEPUTY DIRECTOR: *Thomas E. Samoluk*

Assassination Records Review Board
600 E Street NW • 2nd Floor • Washington, DC 20530
(202) 724-0088 • Fax: (202) 724-0457

December 22, 1997

<u>HAND DELIVERY</u>

DEC 22 P

Mr. Strobe Talbott
Deputy Secretary of State
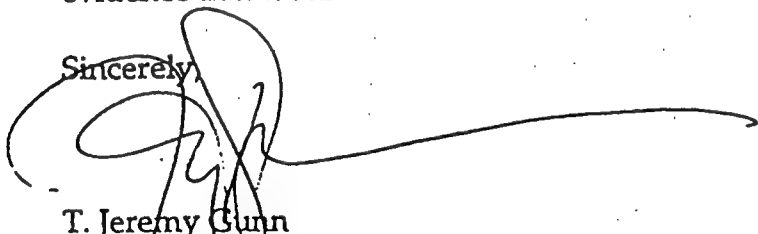Department of State
Washington, D.C. 20520

Dear Mr. Talbott:

I am writing in response to your December 17, 1997 security-classified letter to Assassination Records Review Board Chairman John R. Tunheim. Inasmuch as the Executive Director is the statutorily designated liaison of the Review Board to Federal agencies, I am taking the liberty of responding to you directly.

Your letter identified State Department interests in several records that are scheduled for an upcoming Review Board meeting. Although the Review Board is well aware of the general interest that you describe in your letter, *the Board has not received evidence (or argument) from the State Department regarding the particular records at issue.* Even if the Board were to agree with the general propositions stated in your letter, it is not clear that the opening of the documents at issue would release any information that is not already effectively in the public domain.

The Review Board strongly urges the Department of State to provide evidence that is specific to the documents at issue. I would be pleased to make arrangements for your designated representative to review the specific records so that he or she might provide evidence that would assist the Review Board in its decisions.

Sincerely,

T. Jeremy Gunn
Executive Director

BOARD MEMBERS: *John R. Tunheim, Chair • Henry F. Graff • Kermit L. Hall • William L. Joyce • Anna K. Nelson*
EXECUTIVE DIRECTOR: *T. Jeremy Gunn •* DEPUTY DIRECTOR: *Thomas E. Samoluk*

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

EXECUTIVE DIRECTOR

ER 97-5738
26 November 1997

The Honorable John Raymond Tunheim
Chairman
Assassination Records
  Review Board
600 E. Street N.W.
Washington, D.C.

Dear Judge Tunheim:

(C)   I have just received informal word of the decisions the JFK Board made at its 17 November 1997 meeting. Most of the Board's decisions--those relating to the CIA presence in Warrenton, CIA's involvement in various non-governmental organizations, and the details of CIA funding of the Cuban Revolutionary Council--are very welcome. I must, however, urge the Board to reconsider its decision to release documents in a form that would reveal the Agency's use of

(C)   We stand behind the position that we have presented in writing and in discussions with the Board on previous occasions. I would welcome an opportunity to have a senior CIA representative meet with the Board at your convenience to explain why the Agency considers this information so sensitive and to answer any questions you may have. Meanwhile, I offer the following summary of our fundamental concerns.

(S)

CL BY: 2217297
CL REASON: 1.5 (c)
DECL ON: X1
DRV FROM: COV 2-87

Judge Tunheim

clearly illustrates the purpose behind the Director's
statutory obligation to protect intelligence methods from
unnecessary and inappropriate disclosure.

(S)

(S)   continues to be an
important intelligence method. Its use is undiminished
since the 1960s, and it will remain essential for the
foreseeable future. I urge the Board to reconsider its
recent decision insofar as it concerns the Agency's use of
                                          In this regard, we will be
forwarding a more comprehensive memorandum addressing the
damage issue prior to the next Board meeting, and we would
also like to offer the Board the opportunity for a personal
appearance by a senior CIA representative should that be
appropriate.

Sincerely,

David W. Carey

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Judge Tunheim

Distribution: ER 97-5738
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